

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

MAS TEC INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses
RSA 275:43 V unpaid earned time
RSA 275:49 guaranteed fringe benefits

Employer: Mas Tec Inc., 800 Douglas Rd., Coral Gables, FL 33134

Date of Hearing: March 11, 2015

Case No. 49536

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 12, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on February 19, 2015.

The claimant had added to the Wage Claim a request for the pay out of accrued time. This was settled prior to the hearing and is not a part of this decision. The total of the Wage Claim is \$6,004.00.

The claimant testified that he worked for the employer for about seven months and was an hourly employee. At the end of his work schedule for a day, if there was time left in the work day, the claimant stated that he was told to go home. This went on for several weeks when the claimant realized that he was guarantee a 40 hour work week. He feels that he should be paid for all the hours when he was sent home and did not get paid for the guaranteed forty hours.

The claimant was also hired with the provision that he was to work in the Concord, New Hampshire area. He said his main office was in Massachusetts and he had to go there once a week for staff meetings. The claimant said that most of his work was performed in Massachusetts working with other employees because he was not licensed to work in that state. He believes that his home base was his home and that he should be paid for all travel time to any Massachusetts location to work.

The claimant also feels that he should be paid for the extensive start up time each morning as required by the employer. He has to contact at least one supervisor and get his work assignments. He had to acquire a daily password and if it was not used immediately there was a wait period before another was issued. The claimant stated that he also had to do a review of his vehicle for supplies and any vehicle issues noted. At night, after the completed work day, the claimant had to shut off his employer provided I-Pad.

The claimant said that these procedures took about a half hour of time each day and the time was not paid.

The employer testified that the claimant was hired as an hourly employee and filled out time cards. The claimant was paid for all hours worked. The employer stated that they were trying to branch out into New Hampshire but the market was not being set up as quickly as expected. The claimant was told that his work would be in New Hampshire but his hiring agreement assigned him to a base in Wilmington, MA.

The employer said that they tried to give each hourly employee a minimum of forty hours a week and did pay overtime for any hours after the forty. The client did not always provide forty hours of work and so the employer allowed the employee to work in other areas of the company or just to sign out for the day. The employer said that the claimant used both of these options from time to time.

There is no directive or policy to pay out of market travel time. The claimant may have assumed that his market was in Concord, New Hampshire but his home base was in Wilmington, Massachusetts. This fact was pointed out in the hiring agreement. There were plans to grow the New Hampshire market but it did not happen in the numbers needed to consider it a free standing market.

The employer testified that they were very aware of the sign in and sign out times. They feel that the claimant is adding time to this process that is not necessary. The process took a matter of minutes and not a half hour each day. The claimant was accurate on his presentations of duties but not on the required time.

The employer maintains that all wages have been paid and that the claimant was actually overpaid by fifteen hours.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;

(d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or

(e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This section of the law places an issue such as employee expenses and earned time into the category of wages when the expenses and the time are due and owing.

RSA 275:49 Every employer shall:

I. Notify the employees, at the time of hiring of the rate of pay, and of the day and place of payment;

II. Notify his or her employees of any changes in the arrangements specified above prior to the time of such changes;

III. Make available to his or her employees in writing or through a posted notice maintained in a place accessible to his or her employees employment practices and policies with regard to vacation pay, sick leave, and other fringe benefits;

IV. Furnish each employee with a statement of deductions made from his or her wages under RSA 275:48 for each pay period such deductions are made;

V. Keep posted in a place accessible to his or her employees an abstract of this subdivision furnished by the commissioner which shall include information about the criteria for classifying an employee as an employee or as an independent contractor;

VI. Make such records of the persons employed by him or her, including wage and hour records, preserve such records for such periods of time, and make such reports therefrom to the commissioner, as the commissioner shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this subdivision; and

VII. Keep posted in a place accessible to his or her employees the following: "It is illegal in New Hampshire under both state and federal law to pay employees different wages for the same work based solely on sex. If you think that your employer has violated this provision, please contact the New Hampshire Department of Labor." This notice shall also include the

address, phone number, and email address of department personnel to be contacted with complaints under this subdivision, as well as an Internet link to RSA 275:37.

This part of the law mandates the payment of fringe benefits when the benefits are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant did not prove that there was any policy on the travel time. He did say that he felt a set time was enough to travel but that was his opinion. The claimant was also an hourly employee who was to receive premium pay for working beyond forty hours. He recorded his time and was paid for the time worked. It appears that the claimant wanted to be a combination of salaried and hourly for the purpose of wages. This situation is not allowed under the law.

The employer was credible in their testimony that the startup time was de minimus. The claimant did not bear his burden that the practice took about one half hour each work day.

The issue of earned time was settled prior to the hearing.

The Wage Claim is invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 26, 2015

TFH/kdc